United Nations A/C.6/58/SR.12

General Assembly
Fifty-eighth session

Official Records

Distr.: General
23 October 2003
English
Original: French

Sixth Committee

Summary record of the twelfth meeting
Held at Headquarters, New York, on Tuesday, 21 October 2003, at 3 p.m.

Chairman: Mr. Baja ..... (Philippines)

Contents

Agenda item 158: International convention against the reproductive cloning of human beings *(continued)*

Agenda item 150: Convention on the jurisdictional immunities of States and their property

Agenda item 154: International Criminal Court *(continued)*

Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session *(continued)*

Agenda item 128: Administration of justice at the United Nations *(continued)*

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

03-57147 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 158: International convention against the reproductive cloning of human beings
(continued) (A/58/73, A/C.6/58/L.2, A/C.6/58/L.8 and A/C.6/58/L.9)

1. **Mr. Awanbor** (Nigeria) said that human cloning was morally repugnant and should be prohibited in all its forms. The fact that the fallacious arguments advanced in favour of the practice were being demolished was to be welcomed. He noted with consternation that the advocates of human cloning spurned all moral, religious and ethical considerations; moreover, they had not yet given a satisfactory answer to the question of the provenance of the necessary "raw materials". Because of their poverty and ignorance, the women of developing countries, and particularly of Africa, were at risk of serving as guinea-pigs. In the long run, the commercialization of cloning would threaten the social and demographic stability of developing countries. The pursuit of cloning tests would therefore merely aggravate those countries' problems, and the resources assigned to such tests should rather be invested in sustainable development.

2. **Mr. Amurani-Phiri** (Malawi), associating himself with the statement made by Morocco on behalf of the Group of 77 and China, said that advantages and risks were inherent in all technologies; before adopting a collective decision on the question of cloning, States must consider the question of ethics. While having more urgent problems to deal with, such as malaria, malnutrition and AIDS, Malawi was well aware that any technological advance would affect it in one way or another. What was most worrying was that countries often found themselves powerless in face of technological advances because they possessed neither the legal instruments needed in order to ensure that good use would be made of new developments nor the means of controlling their effects. At the time of the famine of 2002 and 2003, the offer of food aid in the form of genetically modified corn had taken his country by surprise.

3. After reviewing various aspects of genetic engineering, he summed up his delegation's position as follows: reproductive cloning should not be authorized, and neither should be interventions upon the human somatic line for the purpose of improving the human race; cloning for therapeutic purposes might prove useful, but only subject to the strictest controls; human embryos should not be created for research or therapeutic purposes; sales of human ovules should be prohibited, but donations to known persons might be authorized on a case-by-case basis; the United Nations should assist developing countries, including Malawi, to acquire means of surveillance over human cloning activities and should contribute towards the drafting of rules and international legal instruments on human cloning. His country hoped that Member States would rapidly agree to invite the Ad Hoc Committee to embark upon the drafting of an international convention.

4. **Ms. Uluiviti** (Fiji) said that the consideration of the question of cloning had to be based not only on reasoning and ethics but also on the new concepts of the rights of the child, women, indigenous peoples and handicapped persons.

5. Cloning would benefit only those countries that were already developed and wealthy. The poor would derive no advantages whatever. Women, especially those in developing countries, would yet again bear the heaviest burden, since it would be they that would produce the necessary ovules as well as being the first to suffer the inevitable losses in terms of public health and social development. Cloning would therefore run counter to the United Nations aim of reducing global imbalances and would be inconsistent with the Organization's development programme. What was more, attempts were being made in some quarters to use the cloning issue in order to divert attention from the development programme and from commitments entered into at major conferences and summit meetings.

6. Science had value only if it served the purpose of development. For that reason it would be greatly preferable to invest in research on the cloning of adult stem cells with a view to finding means to prevent or cure certain diseases, and to release resources and scientific skills for other research, aimed in particular towards the development of knowledge, medicine and traditional sciences, which had long been available to the developed countries but whose marketing had never benefited the native populations to which they belonged.

7. Draft resolution A/C.6/58/L.2 took account of the many uncertainties still outstanding; it was measured and compatible with the United Nations development programme; while imposing a general prohibition, it left the door open for research that was not contrary to human dignity.

8. **Mr. Dhakal** (Nepal) said that, on an issue as vital as that of cloning, mankind had to seek consensus. The absence of a common approach was extremely prejudicial to countries without the technical or academic equipment needed in order to adopt decisions in full knowledge of the facts.

9. Practically all nations were agreed that human reproductive cloning should be completely prohibited, that research on stem cells should continue and that an international convention should be drafted. But many questions still remained unanswered. Was the therapeutic cloning of embryos the best way of finding remedies to certain diseases for which no cure existed today? Could adult stem cells be used to achieve that result? And if the cloning of embryos were permitted, would it be possible to prevent abuses?

10. Nepal deplored the fact that the work of the Working Group had failed to lead to agreement on a negotiation mandate, and supported the Group's recommendation that the Committee continue to examine the question. The international community had to provide itself as soon as possible with a convention completely prohibiting human reproductive cloning. Negotiations could begin at once on matters that already commanded a consensus; so far as other issues were concerned, scientific discoveries in the coming years would perhaps help to attain a common position. In any event, all social, ethical, legal and economic aspects of the problem as well as the prospects of developing countries had to be taken into consideration.

11. **The Chairman** announced that the Committee had completed its consideration of agenda item 158 (International convention against the reproductive cloning of human beings).

Agenda item 150: Convention on the jurisdictional immunities of States and their property (A/58/22)

12. **Mr. Hafner** (Chairman of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property) introduced the report of the Ad Hoc Committee on the work of its 5th plenary meeting (A/58/22) and reminded members of the Ad Hoc Committee's terms of reference. Considerable progress had been made, as a result of which all outstanding issues - some of which had been on the agenda of the International Law Commission for 25 years - had been settled. That success would not have been possible if delegations had not shown a genuine spirit of compromise despite the difficulties that such an approach involved for some among them.

13. He invited the members of the Sixth Committee to proceed without delay to the consideration of the report.

14. **Mr. Nesi** (Italy), speaking on behalf of the European Union, recalled that at its last meeting the Ad Hoc Committee had discussed and resolved all the main outstanding issues concerning both the draft articles under consideration and the understandings, and had then proceeded to adopt both texts. At the same time, the Ad Hoc Committee had recommended that the General Assembly take a decision on the future form of the draft articles.

15. That success had come at the conclusion of long and difficult negotiations. The European Union was convinced that the moment had now come to incorporate the draft articles and the understandings in a legally binding instrument that would guarantee true legal security.

16. The European Union supported the idea of setting up an ad hoc committee to draft the preamble and final clauses of such a convention. The ad hoc committee would not be called upon to reconsider the two texts already adopted, which would form an integral part of the convention, e.g. in the form of an annex. The European Union was prepared to take part in drafting the necessary provisions.

17. **Mr. Eriksen** (Norway) said that the Ad Hoc Committee's adoption of the draft articles and understandings marked a decisive stage in the codification of a set of universally recognized laws.

18. The draft articles and understandings constituted a well-crafted and balanced whole that would ensure the necessary legal security for States, and more particularly for their courts of law. His delegation did not believe that a fundamental reexamination would result in improving the draft as adopted, and did not deem it appropriate to postpone taking a decision on the form the draft would eventually take.

19. Norwegian courts, unlike those of many other States, were not in the habit of pronouncing themselves on the subject of the scope of the jurisdictional immunity of States. Rather than proceed on the basis of the national legislation as being sovereign in the matter, they interpreted international law in order to determine to what extent the national laws could be applicable to other States. The adoption of an instrument governing matters of such importance would greatly facilitate the courts' task.

20. Norway favoured the adoption, if possible at the current session, of a convention based on the compromise agreed upon by all delegations. Given the short time available, the Ad Hoc Committee ought to meet not later than the beginning of 2004 with a view to adopting the preamble and final closes, so that the convention might be adopted at the fifty-ninth session of the General Assembly.

21. **Mr. Ruiz-Rosas** (Peru), speaking on behalf of the countries of the Rio Group, expressed great satisfaction with the adoption of the draft articles on jurisdictional immunities of States and their property, which represented a considerable reinforcement of legal security.

22. The countries of the Rio Group appreciated the fact that their concerns and aspirations had been taken into consideration throughout the negotiations. While considerable progress had been achieved, a decision on the form of the proposed instrument was still outstanding. In that connection, the Rio Group countries favoured the choice of an international convention which, being a binding instrument, would provide a solid basis for the compromise reached.

23. **Mr. Bliss** (Australia) said that his delegation approved the Ad Hoc Committee's recommendation that the General Assembly should decide upon the form to be taken by the draft articles on jurisdictional immunities of States and their property and favoured the adoption of a convention based on the draft articles and understandings, as reproduced in the annex to the Ad Hoc Committee's report.

24. The draft needed to be supplemented by a preamble and final clauses, including a general escape clause to govern the relationship between the articles and other international agreements touching upon the same subject. The final clauses, the drafting of which should be entrusted to the Ad Hoc Committee, should include an article specifying that the understandings formed an integral part of the convention. The draft convention ought to be adopted at the next session of the General Assembly at the latest.25. **Mr. Yamada** (Japan) observed that the draft articles as adopted were the result of a compromise. Even if the draft did not satisfy every State, his delegation was convinced that a better result could not have been accomplished. The establishment of a uniform international regime guaranteeing stability in relations between States was urgently needed. Accordingly, Japan would wish the General Assembly to adopt the draft articles in the form of a convention. He hoped that the Ad Hoc Committee would be reconvened for the purpose of drafting a preamble, final clauses and a simple clause on the settlement of disputes.

26. **Mr. Liu Zhenmin** (People's Republic of China) hoped that delegations would continue to manifest a will for consensus, so that the draft articles would take the form of a legally binding instrument, namely, an international convention.

27. His delegation wished to point out, however, that the text was not as satisfactory or perfect as it might have been. Owing to the numerous lacunae existing in most national legislations, practice differed greatly from one country to another. Moreover, there were also incompatibilities between the practice and the applicable national laws and regulations. Globalisation and the intensification of trade and economic cooperation meant that conflicts between legal regimes governing jurisdictional immunities were bound to multiply. The adoption of an international convention should therefore assist States in regulating and standardising their practice in the interests of avoiding legal conflicts.

28. His delegation welcomed the European Union's position in favour of an international convention. However, the additional conditions proposed by the European Union called for more careful consideration. If the European Union's proposal were to be adopted, the question would arise whether the text of the understandings could indeed form an integral part of the convention, the wording of some of them precluding the possibility of their integration as they stood. Furthermore, if contradictions were found to exist in the relationship between the future convention articles and the understandings, the need might well arise to envisage formulating some new ones, it being understood that the present draft articles constituted an autonomous text. His delegation supported the

Japanese delegation's proposal for a new meeting of the Ad Hoc Committee to prepare a comprehensive and definitive draft convention.

29. **Mr. Hahn Myung-jae** (Republic of Korea) said that his delegation was in favour of the adoption of the draft articles in the form of a convention and, to that end, would support the convening of a meeting of the Ad Hoc Committee in the spring of the following year. It should, however, be made clear that the Committee would not be called upon to reconsider the draft articles but only to reach agreement on a preamble and final clauses.

30. In order to speed up the proceedings, he suggested that the Secretariat be requested to prepare drafts of a preamble and final clauses in time for Member States to take cognizance thereof and submit those drafts to the Ad Hoc Committee for consideration

31. **Mr. Rosand** (United States of America) said that the adoption of the draft articles by the Ad Hoc Committee represented a great step forward. Even if some views continued to diverge, it was increasingly agreed that there was a need to restrict the possibility of States and State companies invoking jurisdictional immunity before the courts of another State, particularly in matters of trade.

32. The draft articles were the concretization of what was known as the restricted immunity theory, which meant that when a State engaged in a commercial transaction with a national of another State, it could not invoke its sovereign immunity before a court of that State if complaints relating to the said transaction fell within that court's jurisdiction. The draft articles also specified that States could not invoke absolute immunity in cases of personal injury or damage to property that were attributable to them and that had occurred in the territory of the other State, or in connection with rights or interests pertaining to real estate. His delegation considered that those rules were good and should be approved.

33. However, he was disturbed to note that the Ad Hoc Committee's wording sometimes lacked precision. With regard to review proceedings, the articles were not intended to challenge the general rule whereby the courts of a State were not competent to impose reparations or to dictate the conduct of another sovereign State. At the same time, the draft articles should not be capable of interpretation as limiting the possibility for a court to have recourse to a review in order to protect the integrity of its own proceedings if the other State decided not to claim sovereignty and to take the matter to court.

34. With respect to jurisdictional immunity for personal injury or damage to property, the wording adopted by the Ad Hoc Committee failed to meet certain questions connected with State obligations deriving from widely accepted international standards in matters of compensation to victims of prohibited acts. Lastly, the definition and scope of the term "commercial transactions" were not sufficiently precise, and neither were the provisions relating to the jurisdiction of the host State in respect of the internal affairs of embassies and consulates. For those reasons, his delegation continued to think that the General Assembly should adopt the draft articles in the form of a non-binding instrument, and that, taking into account the development of practice in the field concerned, States should be allowed more time to consider the matter. If the form of a convention were decided upon, a meeting of the Ad Hoc Committee should be convened for the purpose of careful consideration of the wording of the preamble and final clauses.

35. **Mr. Tarabrin** (Russian Federation) welcomed the excellent results of the work of the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property and expressed the view that the draft articles should serve as the basis for a convention. With the requisite political will, the convention could already be adopted at the current session of the General Assembly; however, in view of the time constraints, his delegation would agree that the Ad Hoc Committee should be convened early in 2004 in order to complete its work. The text of the articles having been agreed upon, only the preamble and final clauses still remained to be considered. As for any notes relating to the interpretation of certain aspects of the articles, they could appear in an annex to the convention.

36. Inasmuch as the draft articles reflected a delicate balance between the interests of various participants in the negotiations, the convention should contain provisions prohibiting reservations or permitting them only in respect of certain articles. It was also desirable that a procedure should be provided for the settlement of disputes as to its interpretation or implementation. Referring such disputes to a special arbitration tribunal - the details of whose establishment and operation would be defined in an optional protocol or an annex to

the convention - would be the quickest and simplest solution.

37. The Russian Federation was willing to be flexible and to do everything in its power in order to facilitate the rapid adoption of a convention.

Agenda item 154: International Criminal Court *(continued)* (A/58/372 and A/C.6/58/L.14)

Draft resolution A/C.6/58/L.14

38. **Mr. Peersman** (Netherlands) introduced draft resolution A/C.6/58/L.14 on behalf o its sponsors. In the first preambular paragraph of the English text, the words "49/53 of 9 December 1993" should be replaced by "49/53 of 9 December 1994", and the words "without delay" should be inserted after the words "to consider" in operative paragraph 2.

Draft resolution A/C.6/58/L.14 was adopted.

Agenda item 151: Report of the United Nations Commission on International Trade Law on the work of its thirty-sixth session *(continued)* (A/58/17, A/C.6/58/L.11 and A/C.6/58/L.12)

Draft resolution A/C.6/58/L.11

39. **Mr. Marschik** (Austria), introducing draft resolution A/C.6/58/L.11 on behalf of its sponsors, said that the following countries had become co-sponsors: Afghanistan, Armenia, Costa Rica, Croatia, Mongolia, Portugal, Russian Federation, Spain, Tunisia and Ukraine. He drew particular attention to the sixth preambular paragraph, which mentioned the proposals made by the Secretary-General with a view to strengthening the Commission's secretariat, and to operative paragraphs 1 to 4, which noted the progress achieved by the Commission in its work, as well as to operative paragraph 6, which reaffirmed the importance of training and assistance in the field of international trade law.

Draft resolution A/C.6/58/L.11 was adopted.

Draft resolution A/C.6/58/L.12

40. **The Chairman** drew attention to draft resolution A/C.6/58/L.12 concerning standard legislative provisions of the United Nations Commission on International Trade Law on privately financed infrastructure projects.

Draft resolution A/C.6/58/L.12 was adopted.

Agenda item 128: Administration of justice at the United Nations *(continued)* (A/57/736 and A/C.6/58/L.7)

Draft resolution A/C.6/58/L.7

41. **The Chairman** drew attention to draft resolution A/C.6/58/L.7 as orally revised by the Bureau. Recalling that at the 9th meeting of the Committee the representative of the Syrian Arab Republic had asked for further information on the action expected of the Committee, he said that according to the letter addressed to him by the President of the General Assembly on 19 September 2003 (A/C.6/58/1), the Assembly had decided, at its second session, to allocate the agenda item entitled "Administration of Justice at the United Nations" to the Fifth Committee for its consideration and to the Sixth Committee for the sole purpose of considering the question of an amendment to the statute of the United Nations Administrative Tribunal. The Statute had already been amended twice, at the Sixth Committee's recommendation, by General Assembly resolutions 55/159 and 52/166. In consequence, the same procedure should be followed in connection with the amendment arising from resolution 57/307, a resolution to that effect being adopted by the General Assembly at the recommendation of the Sixth Committee. The first step would be for the Committee to take a decision on draft resolution A/C.6/58/L.7, which he would then communicate to the Chairman of the Fifth Committee. It should be noted that the draft had been orally revised and that the second sentence of paragraph 1 of article 3 of the statute, as amended, would read as follows:

> "Members shall possess judicial experience or any other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction."

Draft resolution A/C.6/58/L.7 was adopted.

The meeting rose at 4.35 p.m.